IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1389 of 2007

A.Radhakrishnan .. Petitioner

Vs.

1. The State of Tamilnadu
   rep. by its Secretary to Government
   Prohibition & Excise Department
   Fort St.George, Chennai-9.

2. The District Collector
   and District Magistrate
   Tiruvannamalai District
   Tiruvannamalai. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus calling for the records relating to the detention order passed by the second respondent pertaining to the order made in D.O.No.41/2007-C2 dated 05.09.2007 in detaining the detenue under 2-b of Tamil Nadu Act 14 of 1982, as a Bootlegger and quash the same and direct the respondents to produce the detenu Haridoss, son of Padavettan, aged about 59 years, who is detained at Central Prison, Vellore, before this Hon'ble Court and set him at liberty as stated therein.

For Petitioner : Mr.O.S.Thilak Pasumbadiyar
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Haridoss, father of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu

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is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 5.9.2007 came to be passed by the second respondent on the basis of the ground case in Crime No.573 of 2007 on the file of Cheyyar Prohibition Enforcement Wing Police Station for the offences punishable under Sections 4(1)(i) read with 4(1)(aaa) read with 4(1-A)(ii) of the Tamil Nadu Prohibition Act, complaint of which was given by one Perumal. According to the complainant, on 9.8.2007, when he consumed arrack purchased from the detenu, he vomited thrice, felt giddiness and fell down, he had burning sensation in his eyes and stomach and chest pain. Knowing that some poisonous substance was added by the detenu to increase the effect of intoxication, he preferred a complaint as referred to above, based on which the Inspector of Police and police party, went to the location, found the detenu selling arrack, apprehended him and seized the contraband. The samples were sent for chemical analysis and report reveals that the sample of arrack contained 6.9%mg of Atropine per 100 ml, and the same would endanger life.

2.2. Apart from the above, the detaining authority also took note of five adverse cases pending against the detenu, viz., Crime Nos.82, 196, 212, 415 and 416 of 2007 for the offences punishable under Sections 4(1)(aa), 4(1)(aaa) read with 4(1-A)(ii) and Rule 6 of RS Rules, 1959, Section 4(1)(i), 4(1)(aaa), 4(1-A)(ii) of the Tamil Nadu Prohibition Act and Rule 6 of the RS Rules, 1959.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

3. Challenging the said detention, the son of the detenu has preferred this Habeas Corpus Petition seeking a writ of habeas corpus to direct the respondents to produce the detenu, now confined in Central Prison, Vellore, before this Court and to call for the records of the respondents relating to the order of detention vide proceedings D.O.No.41/2007-C2, dated 5.9.2007, to set aside the same and to set the detenu at liberty.

4. Heard the learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. The main contention of the learned counsel for the

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petitioner is that even though as per the detention order the detenu was arrested on 9.8.2007 and the first information report as well as the arrest memo furnished to the detenu disclose that he was arrested on 9.8.2007, the counsel for the detenu, in his representation dated 17.9.2007 addressed to the detaining authority, had clearly stated that the detenu was arrested on 7.8.2007 itself, but the said point was not at all considered by the detaining authority while disposing the said representation by proceedings dated 24.9.2007, and therefore, the order of detention is vitiated.

6. A perusal of the detention order, first information report as well as the arrest memo furnished to the detenu disclose that the detenu was arrested on 9.8.2007. However, the counsel for the detenu, in his representation dated 17.9.2007 addressed to the detaining authority, had specifically stated that the detenu was arrested on 7.8.2007. But, the detaining authority, while disposing of the said representation by proceedings dated 24.9.2007 had not considered the said contradiction with regard to the date of arrest raised by the counsel for the detenu. In our considered opinion, the non-consideration of the said vital aspect of the case, viz., as to the date of the arrest, when a serious dispute is raised in that regard, vitiates the detention order.

For the reason aforesaid, the impugned order of detention is vitiated and as such, the same is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 5.9.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Government
   State of Tamilnadu
   Prohibition and Excise Department
   Fort St.George, Chennai-9.

2. The District Collector
   and District Magistrate
   Tiruvannamalai District
   Tiruvannamalai.

3. The Public Prosecutor
   High Court, Madras.

4.The Superintendent,
Central Prison, Vellore.

5.The Joint Secretary to Government,
Public (Law and Order) Department,
F.S.G. Chennai -9.

VSV (CO)
km/5.1.

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